



California Fair Political Practices Commission

November 22, 1989

John D. Tapp, Mayor
City of San Gabriel
P. O. Box 130
San Gabriel, CA 91778

Re: Your Request for Advice
Our File No. A-89-604

Dear Mr. Tapp:

You have requested advice concerning the conflict of interest disclosure provisions of the Political Reform Act.^{1/}

QUESTION

Are transportation and housing which will be provided to you by a San Gabriel based real estate firm in connection with a tax seminar you plan to present in Taiwan reportable as gifts under the Act?

CONCLUSION

To the extent that you provide equal or greater consideration for the transportation and housing, the real estate firm's payments are not gifts under the Act. However, assuming that the value of the transportation and housing will be \$250 or more, it must be disclosed as income on your next statement of economic interests.

FACTS

You own and operate an accounting corporation in San Gabriel. In March 1989 you presented a tax related seminar on a no fee basis to a group of realtors, investors and students which was

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

hosted by a San Gabriel based real estate firm. You have been asked to present a similar tax seminar in Taiwan for which you will again receive no fee, but will be provided transportation and housing by the real estate firm. You anticipate spending 30 to 40 hours familiarizing yourself with the issues and preparing handouts to present at the seminar.

ANALYSIS

As Mayor of the City of San Gabriel, you are required to file a statement of economic interests (Form 721) by April 1 of each year disclosing, among other things, income, including gifts, received by you during the previous calendar year. (Sections 87200-87208.)

The term "gift" is defined in Section 82028 as:

...any payment to the extent that consideration of equal or greater value is not received....

If you can demonstrate that you provided equal or greater consideration for the transportation and housing you will receive in connection with the seminar in Taiwan, such items will not be reportable by you as gifts under the Act. (Sonoda Advice Letter, A-89-179, copy enclosed.) To the extent that the real estate firm pays \$50 or more over the fair market value of the services you provide, you must disclose the firm's payments as gifts on Schedule F of your next statement of economic interests (Form 721).

However, even if the real estate firm's payments do not constitute gifts under Section 82028 because you will provide equal or greater consideration, you must disclose the payments as income on Schedule D of Form 721 if they total \$250 or more. The term "income" includes reimbursement of expenses and per diem. (Section 82030.)

In your letter you mention that the real estate firm which will provide the transportation and housing in Taiwan does not have any contracts with the City of San Gabriel nor does a related development company. However, as Mayor you are required to disclose income of \$250 or more from any source which is located in, doing business within, planning to do business within or has done business within the City of San Gabriel during the past two years, and are required to disclose gifts aggregating \$50 or more from any source other than specified family members. (Sections 82028, 82030 and 82035.)

You have also indicated that the related development company is in the process of developing some commercial property in the city. Please note that Section 87100 prohibits public officials from participating in making or attempting to influence a

John D. Tapp
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governmental decision in which they have a financial interest. (See enclosed pamphlet on the conflict of interest provisions of the Act.) You may wish to request additional advice from the Commission's Legal Division with regard to whether the real estate firm's payments will affect your ability to participate in governmental decisions relating to the development company's activities. The Commission does not provide advice on Section 1090 or other statutes which are not part of the Act.

Please contact me at (916) 322-5662 if you have additional questions.

Sincerely,

Kathryn E. Donovan
General Counsel

Carla J. Wardlow
JP

By: Carla J. Wardlow
Assistant Chief, Technical
Assistance & Analysis Division



CITY OF SAN GABRIEL

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532 WEST MISSION DRIVE * SAN GABRIEL, CALIFORNIA 91776 * (213) 282-4104 * 283-2594

P. O. BOX 130 * SAN GABRIEL, CALIFORNIA 91778

(213) 308-2803

October 11, 1989

CITY WITH A MISSION

MR. WAYNE IMBERI
FAIR POLITICAL PRACTICES COMMISSION
POST OFFICE BOX 807
SACRAMENTO, CA. 95804-0814

RE: REQUEST FOR ADVICE LETTER

Dear Mr. Imberi:

After our telephone conversation on Friday October 6th, as you suggested, a call was made to James R. Hickey, Office of District Attorney County of Los Angeles. During this conversation, the below noted fact situation, as was previously described to you, was verbally outlined to Mr. Hickey.

"Lynda C. Tapp and myself, John D. Tapp operate an accounting practice in San Gabriel under the name of Tapp & Tapp An Accountancy Corporation, with Lynda and myself both working as the only two Certified Public Accountants in the firm. Our profession practice as Certified Public Accountants has operated within the City since 1975. On March 25, 1989, we presented a tax related seminar to a group of realtors, investors and students which was hosted by a San Gabriel based real estate firm. This seminar was presented as an accommodation to the host real estate firm. We have now been asked to present a similar tax seminar in Taiwan for the same real estate firm that has a base of operation in Taiwan. This seminar will also be presented on a no fee basis, however transportation and housing will be provided to us for the trip. It is anticipated that at least thirty to forty hours of combined preparation time will be required to become intimately familiar and prepare seminar hand out materials for the topics of interest. In as much as this seminar will be presented as a part of our professional practice as CPA's, it was verbally confirmed that this type of fact situation does not constitute a gift to a public official and therefore does not require disclosure on the FPPC disclosure reports filed. The real estate company based in San Gabriel does not have any contracts with the City of San Gabriel where I currently sit as Mayor, nor does a related development company. The

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MR. WAYNE IMBERI
FAIR POLITICAL PRACTICES COMMISSION

related development company is in the process of developing a 11 area commercial property in the City."

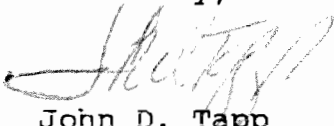
After describing this fact situation to Mr. Hickey of the District Attorney's office, it was indicated to me verbally that in Mr. Hickey's opinion this fact situation did not constitute a violation of 1090 of the Government Code. Mr. Hickey indicated his primary responsibility with the District Attorney's office was making criminal investigations into violations of Government Code 1090.

Mr. Hickey further indicated that an advisory letter could be obtained from FPPC in accordance with Section 83114, subsections A&B of the Political Reform Act.

Therefore, on the advice of Mr. Hickey, I'm sending this request to obtain written verification that the fact situation outlined above does not constitute a situation required to be addressed under the Political Reform Act.

Your response would be very much appreciated with regard to a advisory letter addressing the information and facts outlined above. Any questions or clarifications can be directed to this office.

Sincerely,



John D. Tapp
Mayor
City of San Gabriel



California Fair Political Practices Commission

October 23, 1989

Honorable John D. Tapp
Mayor, City of San Gabriel
P.O. Box 130
San Gabriel, CA 91776

Re: Letter No. 89-604

Dear Mayor Tapp:

Your letter requesting advice under the Political Reform Act was received on October 19, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Jeanne Pritchard
Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

JP:plh